

BOARD OF APPEALS CASE NO. 5221

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BEFORE THE

APPLICANTS: James & Julie Chaplin

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow an existing
deck within the required rear yard setback;
717 Scottish Isle Drive, Abingdon**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/23/02 & 1/30/02

HEARING DATE: March 18, 2002

Record: 1/25/02 & 2/1/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, James and Julie Chaplin, are requesting a variance, pursuant to Section 267-36B, Table VI, and Section 267-23C(1)(a)(6) of the Harford County Code, to allow an existing deck within the required 23 foot rear yard setback (20 feet existing) in an R3/COS Urban Residential-Community with Open Space District .

The subject parcel is located at 717 Scottish Isle Drive, Abingdon, Maryland 21009, within the subdivision of Monmouth Meadows and is more particularly identified on Tax Map 56, Grid 4C, Parcel 587. The subject parcel consists of 7,013 square feet, is zoned R3/COS and is entirely within the First Election District.

Ms. Julie Chaplin appeared and testified that she and her husband had the deck built by a contractor. They both assumed the contractor had obtained the necessary permits and inspections and had built the deck to specifications. Only later did they learn this was not the case and the deck was 3 feet closer to the rear lot line than allowed by Code. The witness stated that her property is quite unique. It backs up to a common area that is 20 feet wide and then a forest retention area. As a result, her home is at least 100 yards from the closest residential lot to the rear of her home and there are significant stands of trees within that area. The witness did not feel that a 3 foot variance would have any impact on anybody as a result. Ms. Chaplin also indicated that decks similar to hers are quite commonly found in her neighborhood.

The Department of Planning and Zoning supports the Applicant's request finding the request, "...minor in nature and should have little or no adverse impact on adjacent properties or the intent of the Code."

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There were no persons that appeared in opposition to the Applicant's request. Submitted by the Applicant, however, was a statement of support signed by 3 of the Applicant's neighbors including those neighbors immediately adjacent to the Applicant.

CONCLUSION:

The Applicants, James and Julie Chaplin, are requesting a variance, pursuant to Sections 267-36B, Table VI, and 267-23C(1)(a)(6) of the Harford County Code, to allow an existing deck within the required 23 foot rear yard setback (20 feet existing) in an R3/COS Urban Residential-Community with Open Space District .

Harford County Code Section 267-23C(1)(a)(6) provides:

"Exceptions and modifications to minimum yard requirements.

(1) Encroachment. [Amended by Bill No. 88-17]

(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:

[6] Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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The Hearing Examiner concludes that the property is unique in that it backs up to both an open space area and a forest retention area and actually mitigates the necessity of the Code setback requirements. Requested is a 3 foot variance that will have no adverse impact on any other property. The error in construction was created by a contractor and was not of the Applicants' own making. Because of the very large area of open space and forest retention located to the rear of the Applicants' property, the purposes of the rear yard setback requirements will not be impaired.

The Hearing Examiner recommends approval of the Applicants' request, subject to Applicants obtaining any and all necessary permits and inspections.

Date: APRIL 17, 2002

William F. Casey
Zoning Hearing Examiner